

AMENDED IN SENATE JUNE 26, 2009

AMENDED IN ASSEMBLY MAY 4, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 281

**Introduced by Assembly Member De Leon
(Coauthor: Assembly Member Conway)**

February 12, 2009

An act to add Article 2 (commencing with Section 5911) to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, relating to agriculture.

LEGISLATIVE COUNSEL'S DIGEST

AB 281, as amended, De Leon. Citrus disease prevention: California Citrus *Pest and Disease Prevention* Committee.

Existing law generally provides for the eradication of pests that threaten this state's agriculture. Existing law provides that there is in the Department of Food and Agriculture the California Citrus Advisory Committee, comprised as specified. The committee is required to develop and make recommendations to the Secretary of Food and Agriculture on all matters regarding the implementation of an inspection program, as provided.

This bill would create in the Department of Food and Agriculture the California Citrus *Pest and Disease Prevention* Committee, which would consist of 17 members (14 producers in the citrus fruit industry, 2 citrus nursery operators, and one public member) to be appointed by the

Secretary of Food and Agriculture, as specified. The bill would set out the powers and duties of the committee, including, among others, the authority to ~~conduct, and contract with others to conduct, develop, subject to the approval of the secretary, a statewide citrus specific pest and disease work plan that includes~~ informational programs to educate and train residential owners of citrus fruit, local communities, groups, and individuals on the prevention of *pests, and diseases* ~~or and their~~ vectors, specific to citrus and programs for surveying, detecting, ~~and~~ analyzing, and treatment of citrus *pests and diseases*. The bill would provide for a monthly assessment, as provided and for specified related purposes, to be paid by producers, as defined *and except as provided*, and remitted to the department and deposited into the *Citrus Disease Management Account, which the bill would create in the* Department of Food and Agriculture Fund. The bill would provide for a referendum voting procedure regarding the continued operation of these provisions.

Because this bill would impose assessment requirements on producers and handlers of citrus fruit, the violation of which would be a misdemeanor under other provisions of existing law, this bill would create a new crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 2 (commencing with Section 5911) is
2 added to Chapter 9 of Part 1 of Division 4 of the Food and
3 Agricultural Code, to read:

4
5 Article 2. Citrus Disease Prevention
6

7 5911. (a) The Legislature hereby finds and declares that the
8 citrus killing diseases, Huanglongbing, citrus leprosis, citrus
9 variegated chlorosis, and citrus canker, and the associated vectors
10 present a clear and present danger to California's citrus industry,
11 as well as to other commodities and plant life.

(b) This article is intended to establish an industry-funded program to assist ~~with the control of diseases and vectors in combating pests, and diseases and their vectors,~~ specific to citrus when found in California.

(c) This article is not intended to create new mandates or circumvent state and federal authority on *citrus* or other agricultural commodities.

(d) This article is not intended to establish a precedent, or to ~~supersede, or to reduce or in any way alter government funding of the effort~~ *supersede or supplant in any way federal, state, or local government funding of efforts* to combat citrus diseases and other pests in this state.

(e) The prevention and management of citrus diseases is ~~affected with the~~ *a matter* of public interest. The provisions of this article are enacted for the protection of the industry and in the exercise of the police power of the state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

(f) *The Legislature finds and declares that the California citrus industry creates one billion eight hundred million dollars (\$1,800,000,000) in citrus fruit, another one billion two hundred million dollars (\$1,200,000,000) in economic activity, and employs an estimated 25,000 people in the state.*

5912. Unless the context otherwise requires, the following definitions shall govern the construction of this article:

(a) “Carton” means a unit equivalent to 40 pounds of citrus fruit.

(b) “Citrus” means “citrous” and any plants of the genera *Citrus*, *Fortunella*, *Poncirus*, and all hybrids having one or more of such as parents.

(c) “Citrus disease” includes any infectious, transmissible, or contagious disease or vector infesting citrus trees.

(d) “Committee” means the California Citrus *Pest and Disease* Prevention Committee.

(e) “Department” means the Department of Food and Agriculture.

(f) “Districts,” except as otherwise provided in Section ~~5913~~ *5914*, consist of the following geographical areas:

(1) ~~District 1~~ *The Southern District* consists of all growing areas in San Bernardino County and all other areas to the south, west,

1 and east of San Bernardino County that are not included in any
2 other district.

3 (2) ~~District 2~~ *The Coastal District* consists of all growing areas
4 in the Counties of Monterey, San Luis Obispo, Santa Barbara, and
5 Ventura.

6 (3) ~~District 3~~ *The Kern District* consists of all growing areas in
7 Kern County.

8 (4) ~~District 4~~ *The Tulare District* consists of all growing areas
9 in Tulare County.

10 (5) ~~District 5~~ *The Northern District* consists of all growing areas
11 in Fresno County and all other areas to the north that are not
12 included in any other district.

13 (g) “Handler” means a person or entity who receives citrus fruit
14 from a producer and who prepares the citrus fruit for fresh market.

15 (h) “Marketing season” begins October 1 of each year and ends
16 September 30 of the next year.

17 (i) “Person” means a producer, handler, or any other entity that
18 holds title to citrus fruit subject to assessment.

19 (j) “Producer” means any person in this state who is a grower
20 of citrus fruit, but does not include a citrus nursery.

21 (k) “Secretary” means the Secretary of Food and Agriculture.

22 (l) “*Specific to citrus*” means *of exclusive or principal concern*
23 *to citrus as opposed to other commodities.*

24 5913. (a) *There is hereby created the Citrus Disease*
25 *Management Account in the Department of Food and Agriculture*
26 *Fund.*

27 (b) *The Citrus Disease Management Account shall consist of*
28 *money transferred from the General Fund and money from federal,*
29 *industry, and other sources. Money from federal, industry, and*
30 *other non-General Fund sources shall be available for expenditure*
31 *without regard to fiscal year for the sole purpose of combating*
32 *citrus specific pests, diseases, and their vectors.*

33 ~~5913.~~

34 5914. (a) There is hereby created in the department the
35 California Citrus *Pest and Disease Prevention Committee.*

36 (b) The committee shall be composed of 17 members. Fourteen
37 producer representatives shall be appointed by the secretary from
38 nominations received from each district. District representation
39 shall be determined by the secretary on a proportional basis equal
40 to the production history of each district for the previous two years.

1 The secretary shall also strive to appoint producers representing
2 the different varieties of citrus fruit produced in California;
3 ~~including, but not limited to, oranges, lemons, and grapefruit.~~

4 (c) One member shall be a public member, appointed by the
5 secretary from the nominees recommended by the committee.

6 (d) Two members shall be citrus nursery operators, one
7 representing northern California, defined as counties in the San
8 Joaquin Valley and north but not including counties on the coast
9 who shall be represented by a southern California designee, and
10 one representing southern California, appointed by the secretary
11 from the nominees recommended by the committee.

12 (e) (1) The initial members of the committee shall be appointed
13 within 30 days of the enactment of this article. The members shall
14 serve staggered terms. The terms of the members of the committee
15 shall expire as follows:

16 (A) Two members on September 30, 2010.

17 (B) Five members on September 30, 2011.

18 (C) Five members on September 30, 2012.

19 (D) Five members on September 30, 2013.

20 (2) The members of the committee shall allocate the initial terms
21 among themselves by lot or other method.

22 (f) Appointments to the committee shall be for terms of five
23 years. Vacancies shall be immediately filled by the secretary based
24 on recommendations from the committee for the unexpired portion
25 of the terms in which they occur.

26 (g) The secretary and other appropriate individuals, as
27 determined by the *secretary, in consultation with the* committee,
28 shall be nonvoting ex officio members of the committee.

29 (h) Committee members may be compensated for reasonable
30 expenses actually incurred in the performance of their duties, as
31 determined by the ~~committee and concurred in by the secretary~~
32 *secretary after consultation with the committee.*

33 (i) The committee shall meet at the request of the secretary, the
34 committee chairperson, or upon the request of three committee
35 members.

36 (j) The committee shall appoint a chairperson, one or more vice
37 chairpersons, and any other officers it deems necessary.

38 (k) The Legislature finds and declares that persons appointed
39 to the committee are intended to represent and further the interests
40 of the citrus industry, and that this representation and furtherance

1 is intended to serve the public interest. Accordingly, the Legislature
2 finds that, with respect to persons who are appointed to the
3 committee, the citrus industry is tantamount to, and constitutes,
4 the public generally within the meaning of Section 87103 of the
5 Government Code.

6 ~~5914.~~

7 5915. (a) The powers and duties of the committee are limited
8 to activities involving the producers of citrus fruit and residential
9 owners of citrus fruit *or other host material*.

10 (b) The committee may do all of the following:

11 ~~(1) Conduct, and contract with others to conduct, either or both~~
12 ~~of the following:~~

13 *(1) Develop, subject to the approval of the secretary, a statewide*
14 *citrus specific pest and disease work plan that includes, but is not*
15 *limited to, the following:*

16 (A) Informational programs to educate *and train* residential
17 owners of citrus fruit, *local communities, groups, and individuals*
18 on the prevention of ~~diseases or vectors~~ *pests, and diseases and*
19 *their vectors*, specific to citrus.

20 (B) Programs for the surveying, detecting, ~~and analyzing of~~
21 *analyzing, and treatment of pests and diseases* specific to citrus
22 involving producers of citrus fruit and residential owners of citrus
23 fruit.

24 ~~(2) Take by grant, purchase, gift, devise, lease, or otherwise and~~
25 ~~hold, use and enjoy, and lease, or otherwise dispose of, real and~~
26 ~~personal property of every kind and description necessary to the~~
27 ~~full and convenient exercise of the committee's powers.~~

28 ~~(3) Cause fees to be levied, as provided in Section 5918, to pay~~
29 ~~any obligation of the committee and to accomplish the purposes~~
30 ~~of the committee in the manner provided in this article.~~

31 ~~(4) Make contracts, and employ, except as otherwise provided~~
32 ~~in this article, all persons, firms, and corporations necessary to~~
33 ~~carry out the purposes and the powers of the committee, and at~~
34 ~~any salary, wage, or other compensation as the committee shall~~
35 ~~determine.~~

36 ~~(5) Perform any and all acts either necessary or proper to fully~~
37 ~~and completely carry out the purposes for which the committee~~
38 ~~was organized.~~

39 *(2) Submit recommendations to the secretary on, but not limited*
40 *to, the following:*

1 (A) *Annual assessment rate.*

2 (B) *Annual budget.*

3 (C) *Expenditures necessary to implement the statewide work*
4 *plan developed pursuant to this section.*

5 (D) *The amount of fees to be levied, as provided in Section 5919.*

6 (E) *The receipt of money from other sources to pay any*
7 *obligation of the committee and to accomplish the purposes of the*
8 *committee in the manner provided in this article.*

9 ~~(6)~~

10 (3) Recommend to the secretary the adoption of regulations
11 consistent with the powers and duties of the committee.

12 (c) The committee shall not engage in any activity deemed by
13 the secretary to be contradictory to any eradication program or
14 quarantine implemented to ~~address citrus diseases~~ *combat citrus*
15 *specific pests, diseases, or related vectors.*

16 (d) For any program or activity occurring pursuant to this section
17 ~~that overlaps with the department's programs or activities,~~ the
18 department shall be the lead agency, *unless an agreement is*
19 *reached between the committee and the secretary to authorize*
20 *another agency within the state or local government to act as lead*
21 *for specific activities.*

22 ~~5915.~~

23 5916. (a) Upon receipt of a recommendation from the
24 committee for the adoption of regulations, the secretary shall do
25 one of the following within 30 working days:

26 (1) Initiate the rulemaking process to adopt the recommendation
27 of the committee.

28 (2) Decline to initiate the rulemaking process and provide the
29 committee with a written statement of reasons for the decision.

30 (3) Request the committee to provide additional information
31 regarding the recommended regulations.

32 (b) All regulations adopted pursuant to this article shall be
33 adopted in compliance with the Administrative Procedure Act
34 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
35 Division 3 of Title 2 of the Government Code), and may be
36 subsequently repealed or amended as provided for in that act.

37 ~~5916.~~

38 5917. No member or agent of the committee shall be personally
39 liable for the actions of the committee or the department. No
40 member or agent of the committee is responsible individually in

1 any way to any other person for errors in judgment, mistakes, or
2 other acts, by either commission or omission, as a principal, agent,
3 or employee except for his or her own individual acts of dishonesty
4 or crime. No member or agent of the committee is responsible
5 individually for an act or omission of any other member or agent
6 of the committee or the department. Liability is several and not
7 joint, and no member or agent of the committee is liable for the
8 default of any other member or agent of the committee or the
9 department.

10 ~~5917.~~

11 5918. The committee shall reimburse the secretary for all
12 expenditures incurred by the secretary in carrying out his or her
13 duties and responsibilities pursuant to this article, *including the*
14 *costs of implementing and administering the administrative,*
15 *enforcement, and regulatory recommendations of the statewide*
16 *work plan developed by the committee.*

17 ~~5918.~~

18 5919. (a) During the first marketing season, beginning
19 February 1, 2010, and ending September 30, 2010, the monthly
20 assessment to be paid by producers shall be one cent (\$0.01) per
21 carton. Thereafter, in addition to any other assessments, fees, or
22 charges that may be required pursuant to this code, producers shall
23 pay a monthly assessment established by the committee that shall
24 not exceed ~~seven cents (\$0.07)~~ *nine cents (\$0.09)* per carton. The
25 assessment shall be:

26 (1) Based on the number of 40-pound carton equivalents
27 produced.

28 ~~(2) Used to purchase equipment for detecting citrus diseases,~~
29 ~~testing citrus trees, fruit, and vectors, and controlling citrus~~
30 ~~diseases, and for contracting with labs to conduct citrus disease~~
31 ~~testing.~~

32 ~~(3)~~

33 (2) Collected from the producer by the first handler. If a
34 producer prepares the citrus fruit for market, the producer shall be
35 deemed the handler.

36 ~~(4)~~

37 (3) Remitted to the department by the first handler, along with
38 an assessment ~~form~~ *report*, at the end of each month during the
39 marketing season.

40 ~~(5)~~

(4) Deposited in the *Citrus Disease Management Account* in the Department of Food and Agriculture Fund or, upon the recommendation of the committee, deposited in accordance with Section 227 or Article 2.5 (commencing with Section 230) of Chapter 2 of Part 1 of Division 1. *The use of the funds deposited in the Citrus Disease Management Account shall be limited to the activities authorized by this article.*

(b) A producer producing less than 750 40-pound carton equivalents shall not be required to remit the assessment provided in subdivision (a).

(b) (c) The committee may recommend to the secretary an assessment less than the amount specified in subdivision (a) or no assessment if no disease prevention program is necessary or if there is sufficient reserve to operate the program.

~~5919.~~

5920. (a) Upon establishment of a disease prevention program, any handler who does not file the required monthly assessment form *report* and assessments by the 10th day of the month following the month for which the assessment is payable shall pay a penalty of 10 percent of the assessment owed and, in addition, 1 ½ percent interest per month on the unpaid balance.

(b) Upon establishment of a disease prevention program, it shall be unlawful for any handler to refuse to collect the assessments or remit the assessments and the proper ~~forms~~ *reports* required by this article.

(c) A handler shall not charge a producer an administrative fee for collecting or remitting an assessment.

(d) A producer who disputes the amount of the assessment may file a claim with the secretary. The producer shall prove his or her claim by a preponderance of the evidence.

(e) A producer may not bring any claim against a handler for damages, or otherwise, in connection with the assessment or the required deduction by the handler of the moneys owed to the producer as provided in this article.

~~5920. (a) Beginning in the 2016-17 marketing year~~

5921. No later than June 30, 2013, the secretary shall hold one or more public hearings to determine whether the operation of this article should be continued. ~~The secretary may waive referendum under this article if, following a hearing, the secretary determines~~

1 ~~there is no substantial question of opposition to doing so among~~
2 ~~affected assessment payers. Thereafter, the secretary shall conduct~~
3 ~~the review process every four years.~~

4 ~~(b) As used in this section, “substantial question of opposition”~~
5 ~~means opposition to the substance of the petition among currently~~
6 ~~affected assessment payers, and is not intended to mean a particular~~
7 ~~number of assessment payers.~~

8 ~~5921.~~

9 5922. (a) If the secretary finds after the hearing that a
10 substantial question *of opposition* exists among affected payers
11 under this article regarding whether the operation of this article
12 should be continued, the secretary shall submit the article for
13 approval utilizing the following voting procedures set forth in this
14 section and Sections ~~5922 to 5927~~ 5923 to 5928, inclusive. *As used*
15 *in this subdivision, “substantial question of opposition” means*
16 *opposition to the substance of the petition among currently affected*
17 *assessment payers, and is not intended to mean a particular*
18 *number of assessment payers.*

19 (b) Within 90 days of the secretary determining the requirement
20 for referendum has been met, the secretary shall establish a list of
21 ~~those~~ persons eligible to vote on the continued implementation of
22 this article.

23 (c) Eligibility shall be limited to ~~the~~ persons who paid the
24 assessment on citrus fruit in the immediately preceding marketing
25 season.

26 (d) (1) In establishing the list, the secretary may require
27 handlers, producers, and others to submit the names, mailing
28 addresses, and assessment values of all producers who paid the
29 assessment on citrus fruit in the immediately preceding marketing
30 season.

31 (2) The information required by the secretary shall be filed either
32 with the monthly assessment form or no later than 30 days
33 following receipt of a written notice from the secretary requesting
34 the information.

35 (e) Any producer whose name does not appear on the secretary’s
36 list may have his or her name added to the list by filing with the
37 secretary a signed statement identifying himself or herself as a
38 producer that paid an assessment during the most recent marketing
39 season.

1 ~~5922.~~

2 5923. For the purpose of voting in the referendum required in
3 ~~Section-5921~~ 5922, only a person required to pay the assessment
4 pursuant to ~~Section-5918~~ 5919 shall have the right to vote.

5 ~~5923.~~

6 5924. In determining whether this article shall become
7 inoperative, the secretary shall find that at least 40 percent of the
8 total number of persons from the list established by the secretary
9 participated in the referendum, and that either one of the following
10 occurred:

11 (a) ~~Sixty-five-Fifty-five~~ percent or more of the persons who
12 voted in the referendum voted in favor of this article, and the
13 persons who voted paid a majority of the assessment dollars on
14 citrus fruit in the preceding marketing season that were paid by
15 all the persons who voted in the referendum.

16 (b) A majority of the persons who voted in the referendum voted
17 in favor of this article, and the persons who voted paid ~~65~~ 55
18 percent or more of the assessment dollars on citrus fruit in the
19 preceding marketing season that were paid by all the persons who
20 voted in the referendum.

21 ~~5924.~~

22 5925. In determining whether the referendum is approved by
23 producers pursuant to the provisions of this article, the secretary
24 shall consider the vote in favor of the referendum of any nonprofit
25 agricultural cooperative marketing association, which is authorized
26 by its members so to assent, as being the assent, approval, or favor
27 of the producers that are members of, or stockholders in, that
28 nonprofit agricultural cooperative marketing association.

29 ~~5925.~~

30 5926. The secretary shall establish a period in which to conduct
31 the referendum that shall not be less than 10 days nor more than
32 60 days in duration. The secretary may prescribe additional
33 procedures to conduct the referendum. If the initial period
34 established is less than 60 days, the secretary may extend the
35 period. However, the total referendum period may not exceed 60
36 days.

37 ~~5926.~~

38 5927. Nonreceipt of a ballot shall not invalidate a referendum.

1 ~~5927.~~

2 5928. (a) If the secretary finds that a favorable vote has not
3 been given as provided in this article, this article shall become
4 inoperative within one year of the referendum.

5 (b) If the secretary finds that a favorable vote has been given
6 as provided in this article, he or she shall certify and give notice
7 of the favorable vote to all persons whose names and addresses
8 may be on file with the secretary as provided in Section ~~5921~~ 5922.

9 5929. *Upon termination of this article, and based upon a*
10 *recommendation of the committee subject to approval by the*
11 *secretary, any collected assessments not required to defray*
12 *financial obligations incurred pursuant to this article shall be*
13 *returned on a pro rata basis to all persons from whom assessments*
14 *were collected during the marketing season immediately preceding*
15 *the date of termination or paid to any existing state or federal*
16 *program engaged in citrus specific pest and disease prevention*
17 *activities. The assessments refunded to handlers shall be paid to*
18 *producers if the assessment was previously deducted from moneys*
19 *owed to the producer by the handler.*

20 5930. (a) *The provisions of this article are severable.*

21 (b) *If any provision of this article or its application is held*
22 *invalid, that invalidity shall not affect other provisions or*
23 *applications that can be given effect without the invalid provision*
24 *or application.*

25 SEC. 2. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.